

**Merchant & Gould**

An Intellectual Property Law Firm

Merchant & Gould P.C.  
3200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402-2215

A Professional Corporation

**RECEIVED**  
**CENTRAL FAX CENTER****Fax Transmission** | November 27, 2006

TO:

**NOV 27 2006**

Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450	FROM: Mark T. Skoog OUR REF: 163.1446USD1 TELEPHONE: 612.332.5300
--	---

Total pages, including cover letter: 5PTO FAX NUMBER 1-571-273-8300

If you do NOT receive all of the pages, please telephone us at 612.332.5300, or fax us at 612.332.9081.

Title of Document Transmitted: RESPONSE TO RESTRICTION REQUIREMENTApplicant: HEI ET AL.Serial No.: 10/678,199Filed: OCTOBER 2, 2003Group Art Unit: 1615Our Ref. No. 163.1446USD1Confirmation No. 2139

Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate.

By:

Name: Mark T. SkoogReg. No.: 40,178

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.

Kay FahlandKay Fahland  
Signature11-27-06  
Date

GEN033.DOT

S/N 10/678,199

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

RECEIVED

CENTRAL FAX CENTER

Applicant: HEI ET AL. Examiner: N. S. LEVY  
Serial No.: 10/678,199 Group Art Unit: 1615  
Filed: OCTOBER 2, 2003 Docket No.: 163.1446USD1  
Title: PEROXY ACID TREATMENT TO CONTROL PATHOGENIC  
ORGANISMS ON GROWING PLANTS

CERTIFICATE UNDER 37 CFR 1.6(d):I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on  
11-27-06By: Kay Fabland  
Name: Kay FablandRESPONSE TO SPECIES ELECTION REQUIREMENT

Mail Stop AMENDMENT  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicants have received and reviewed the Office Action mailed October 27, 2006. This Office Action was in the form of several species election requirements. Applicants respond with the following elections of species.

Peroxy Compound

The Office Action asserts that the present application relates to patentably distinct species of peroxy compound including peroxyacetic acid and mono-isobutyl perglutarate. Without acquiescing to this assertion, Applicants provide the following complete response to this species election requirement.

Applicants acknowledge that the Office Action indicates that claims 44-51 and 53-63 are generic.

First, Applicants respectfully traverse and request withdrawal of this species election requirement. Applicants respectfully submit that the presently claimed methods can readily be searched with any peroxy compound. Therefore, all of these asserted species can be readily

searched and examined together as single group. Applicants respectfully request search and examination of methods employing peroxy compounds such as peroxy-carboxylic acids, including peroxyacetic acid and mono-isobutyl perglutarate.

Second, if the species election requirement remains in its present form, Applicants respectfully request search and examination of the species of peroxyacetic acid. Applicants submit that at least each of pending claims 44-63 reads on or can include methods employing peroxyacetic acid.

### Carboxylic Acid

The Office Action asserts that the present application relates to patentably distinct species of carboxylic acid including acetic acid and heptanoic acid. Without acquiescing to this assertion, Applicants provide the following complete response to this species election requirement.

Applicants acknowledge that the Office Action indicates that claims 44-63 are generic.

First, Applicants respectfully traverse and request withdrawal of this species election requirement. Applicants respectfully submit that the presently claimed methods can readily be searched with any carboxylic acid. Therefore, all of these asserted species can be readily searched and examined together as single group. Applicants respectfully request search and examination of methods employing carboxylic acids such as acetic acid and heptanoic acid.

Second, if the species election requirement remains in its present form, Applicants respectfully request search and examination of the species of acetic acid. Applicants submit that at least each of pending claims 44-63 reads on or can include methods employing acetic acid.

### Plant Tissue

The Office Action asserts that the present application relates to patentably distinct species of plant tissue including fruit, bark, and leaves. Without acquiescing to this assertion, Applicants provide the following complete response to this species election requirement.

Applicants acknowledge that the Office Action indicates that claims 44-63 are generic.

First, Applicants respectfully traverse and request withdrawal of this species election requirement. Applicants respectfully submit that the inventive concept is independent of any particular plant tissue. Further, Applicants respectfully submit that the presently claimed

methods can readily be searched for any plant tissue. Therefore, all of these asserted species can be readily searched and examined together as single group. Applicants respectfully request search and examination of methods including applying to plant tissue such as fruit, bark, and leaves.

Second, if the species election requirement remains in its present form, Applicants respectfully request search and examination of the species of leaves. Applicants submit that at least each of pending claims 44-63 reads on or can include methods employing applying composition to leaves.

### Plant

The Office Action asserts that the present application relates to patentably distinct species of plant including fruit tree. Without acquiescing to this assertion, Applicants provide the following complete response to this species election requirement.

Applicants acknowledge that the Office Action indicates that claims 44-45 and 48-63 are generic.

First, Applicants respectfully traverse and request withdrawal of this species election requirement. Applicants respectfully submit that the inventive concept is independent of any particular plant. Further, Applicants respectfully submit that the presently claimed methods can readily be searched for any plant. Therefore, all of these asserted species can be readily searched and examined together as single group. Applicants respectfully request search and examination of methods including applying to any plant such as a fruit tree.

Second, if the species election requirement remains in its present form, Applicants respectfully request search and examination of the species of fruit tree. Applicants submit that at least each of pending claims 44-63 reads on or can include methods employing applying composition to a fruit tree.

Summary

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, MN 55402-0903  
(612) 332-5300

Date: Nov 27, '06

MTS:kf

Mark T. Skoog  
Mark T. Skoog  
Reg. No. 40,178

